UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMAHL K. HOSENDOVE	:	
	:	PRISONER
v.	:	Case No. 3:03CV207(CFD)
	:	
LARRY MYERS, et al.	:	

ORDER OF DISMISSAL

Plaintiff Jamahl K. Hosendove ("Hosendove"), currently incarcerated at the Northern Correctional Institution in Somers, Connecticut, filed this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He names as defendants Warden Larry Myers, Major Thomas Coates, Major Christine Whidden and Major Michael Lajoie. Hosendove alleges that, as a pretrial detainee, he was required to share a cell with a sentenced inmate, in violation of the Eight and Fourteenth Amendments to the United States Constitution.

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), requires an inmate to exhaust his administrative remedies before bringing a section 1983 action with respect to prison conditions. The Supreme Court has held that this provision requires an inmate to exhaust administrative remedies before filing any type of action in federal court, see Porter v. Nussle, 534 U.S. 516, 122 S. Ct. 983, 992 (2002), regardless of whether the inmate may obtain the specific relief he desires through the administrative process. See Booth v. Churner, 532 U.S. 731, 741 (2001).

The statute clearly states that inmates must exhaust all available administrative remedies before filing suit. See Neal v. Goord, 267 F.3d 116, 122 (2d Cir. 2001) ("[T]he plain language of §

1997e(a), providing that '[n]o action shall be brought ... until such administrative remedies as are available are exhausted,' suggests that exhaustion *prior to commencement* of a § 1983 action is mandated.") (emphasis added). Thus, an attempt to exhaust administrative remedies after the case was filed is generally ineffective to satisfy the exhaustion requirement. See id. ("[Section] 1997e(a) '*requires* exhaustion of available remedies *before* inmate-plaintiffs may bring their federal claims to court *at all*' . . . Subsequent exhaustion after suit is filed therefore is insufficient.") (citations omitted) (emphasis in original); Boston v. Takos, No. 98-CV-6404CJS, 2002 WL 31663510, at *3 (Oct. 4, 2002, W.D.N.Y.) ("Where a plaintiff has failed to comply with 42 U.S.C. S 1997e(a) prior to commencing his lawsuit, the district court should dismiss the action without prejudice.") (citing Neal, 267 F.3d 121-23); Benjamin v. Goord, No. 02CIV.1703(NRB), 2002 WL 1586880, at*2 (July 17, 2002 S.D.N.Y.) ("A plaintiff must file a valid grievance and exhaust all appeals prior to bringing suit, or the case will be dismissed, even if the plaintiff attempts to exhaust after the suit is filed.").

The court takes judicial notice of the Department of Correction Administrative Directives. Directive 9.6, section 6(A)(5) provides that "matter[s] relating to access to privileges, programs and services, conditions of care or supervision and living unit conditions within the authority of the Department of Correction" are grievable. Thus, Hosendove's complaint is within the type of matter subject to the grievance process. The first step for the inmate is to file what is called a "level 1 grievance." Section 12 and 16 provides that the denial of a level 1 grievance, or the absence of a timely response by a corrections official to a level 1 grievance, should be appealed administratively, which is a "level 2 grievance."

The court was unable to discern from the original complaint whether Hosendove had fully

exhausted his administrative remedies before commencing this action. Accordingly, on February 25, 2003, the court ordered Hosendove to file an amended complaint describing the steps he took to exhaust his administrative remedies and providing copies of the institutional grievance forms. See Snider v. Melindez, 199 F.3d 108, 112 (2d Cir. 1999)(holding that district court should not dismiss a case sua sponte for failure to exhaust administrative remedies without affording the inmate notice and an opportunity to be heard).

Hosendove filed his amended complaint on March 7, 2003, and attached a copies of two completed "inmate request forms" and one completed level 1 grievance form. However, all are dated in February, 2003. Hosendove commenced this action on January 13, 2003, the date he signed his original complaint and, presumably, gave it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 270 (1988) (holding pro se prisoner's notice of appeal filed when delivered to prison officials for transmittal to court); Dory v. Ryan, 999 F.2d 679, 681-82 (2d Cir. 1993) (holding pro se inmate's complaint filed when complaint given to prison officials for mailing to the court). Because he must exhaust his administrative remedies before he commences an action in federal court, these exhaustion materials do not satisfy the exhaustion requirement.

Further, Hosendove must *fully* exhaust his administrative remedies. The administrative directives provide that an inmate may appeal to level 2 if he fails to receive a timely response to his level 1 grievance or if his level 1 grievance is rejected. Here, Hosendove states that he did not receive a response to his level 1 grievance, but does not demonstrate that he proceeded to file a level 2 grievance. Also, the February 20, 2003 inmate request form–which includes a response–does not appear to have been appealed to level 2. Thus, Hosendove did not complete the institutional grievance

process.

The court concludes that Hosendove did not exhaust his administrative remedies before he commenced this action. Thus, this complaint is not cognizable. The complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 42 U.S.C. § 1997e(a) after notice for failure to exhaust administrative remedies before filing suit. The Clerk is directed to enter judgment and close this case.

SO ORDERED this _____ day of September, 2003, at Hartford, Connecticut.

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Christopher F. Droney
United States District Judge